

AMENDED IN SENATE AUGUST 13, 2012

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1710

Introduced by Assembly Member Yamada

February 15, 2012

An act to amend Sections 1266, 1416.36, 1416.38, and 1416.70 of the Health and Safety Code, relating to health and care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1710, as amended, Yamada. Nursing home administrators: fees and fines.

Existing law, the Nursing Home Administrators' Act, provides for the licensing of nursing home administrators by the State Department of Public Health. Existing law prescribes specified licensing fees, and requires that the fees be adjusted annually, as directed by the Legislature in the annual Budget Act, by an amount not to exceed the California Consumer Price Index, as specified. Existing law provides for the issuance of citations and administrative fines for the violation of any state or federal statute or regulation governing licensed nursing home administrators. Existing law requires that these fees and associated fines be deposited in the Nursing Home Administrator's State License Examining Fund, a continuously appropriated fund.

This bill would eliminate the Nursing Home Administrator's State License Examining Fund and instead require that these fees and fines be deposited into the State Department of Public Health Licensing and Certification Program Fund. This bill would authorize the department

to adjust the fees, and would remove the adjustment limitation relating to the California Consumer Price Index.

~~This bill would require the department to conduct a staffing and systems analysis, and by March 31, 2013, to post a report detailing this analysis on the department's Internet Web site, and to submit it to the appropriate policy and fiscal committees of the Legislature. The bill would require the department, by January 15 February 1 of each year, to prepare a list of proposed fee adjustments and a specified report relating to nursing home administrator fees, fee adjustments, and nursing home administration generally. The bill would require the department to submit this list and report to the appropriate policy and fiscal committees of the Legislature and to post this report on its Internet Web site.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature that activities
2 of the Nursing Home Administrator Program related to licensure
3 of nursing home administrators be supported by fee revenue that
4 is sufficient to fund these activities.

5 SEC. 2. Section 1266 of the Health and Safety Code is amended
6 to read:

7 1266. (a) The Licensing and Certification Division shall be
8 supported entirely by federal funds and special funds by no earlier
9 than the beginning of the 2009–10 fiscal year unless otherwise
10 specified in statute, or unless funds are specifically appropriated
11 from the General Fund in the annual Budget Act or other enacted
12 legislation. For the 2007–08 fiscal year, General Fund support
13 shall be provided to offset licensing and certification fees in an
14 amount of not less than two million seven hundred eighty-two
15 thousand dollars (\$2,782,000).

16 (b) (1) The Licensing and Certification Program fees for the
17 2006–07 fiscal year shall be as follows:

18			
19	Type of Facility	Fee	
20	General Acute Care Hospitals	\$ 134.10	per bed
21	Acute Psychiatric Hospitals	\$ 134.10	per bed
22	Special Hospitals	\$ 134.10	per bed

1	Chemical Dependency Recovery Hospitals	\$ 123.52	per bed
2	Skilled Nursing Facilities	\$ 202.96	per bed
3	Intermediate Care Facilities	\$ 202.96	per bed
4	Intermediate Care Facilities – Developmentally		
5	Disabled	\$ 592.29	per bed
6	Intermediate Care Facilities – Developmentally		
7	Disabled – Habilitative	\$1,000.00	per facility
8	Intermediate Care Facilities – Developmentally		
9	Disabled – Nursing	\$1,000.00	per facility
10	Home Health Agencies	\$2,700.00	per facility
11	Referral Agencies	\$5,537.71	per facility
12	Adult Day Health Centers	\$4,650.02	per facility
13	Congregate Living Health Facilities	\$ 202.96	per bed
14	Psychology Clinics	\$ 600.00	per facility
15	Primary Clinics – Community and Free	\$ 600.00	per facility
16	Specialty Clinics – Rehab Clinics		
17	(For profit)	\$2,974.43	per facility
18	(Nonprofit)	\$ 500.00	per facility
19	Specialty Clinics – Surgical and Chronic	\$1,500.00	per facility
20	Dialysis Clinics	\$1,500.00	per facility
21	Pediatric Day Health/Respite Care	\$ 142.43	per bed
22	Alternative Birthing Centers	\$2,437.86	per facility
23	Hospice	\$1,000.00	per facility
24	Correctional Treatment Centers	\$ 590.39	per bed

25
26 (2) In the first year of licensure for intermediate care
27 facility/developmentally disabled-continuous nursing (ICF/DD-CN)
28 facilities, the licensure fee for those facilities shall be equivalent
29 to the licensure fee for intermediate care facility/developmentally
30 disabled-nursing facilities during the same year. Thereafter, the
31 licensure fee for ICF/DD-CN facilities shall be established pursuant
32 to subdivisions (c) and (d).

33 (c) Commencing February 1, 2007, and every February 1
34 thereafter, the department shall publish a list of estimated fees
35 pursuant to this section. The calculation of estimated fees and the
36 publication of the report and list of estimated fees shall not be
37 subject to the rulemaking requirements of Chapter 3.5
38 (commencing with Section 11340) of Part 1 of Division 3 of Title
39 2 of the Government Code.

1 (d) ~~By~~ *Notwithstanding Section 10231.5 of the Government*
2 *Code*, by February 1 of each year, the department shall prepare
3 the following reports and shall make those reports, and the list of
4 estimated fees required to be published pursuant to subdivision
5 (c), available to the public by submitting them to the Legislature
6 and posting them on the department's Internet Web site:

7 (1) ~~The department shall prepare a~~ A report of all costs for
8 activities of the Licensing and Certification Program. At a
9 minimum, this report shall include a narrative of all baseline
10 adjustments and their calculations, a description of how each
11 category of facility was calculated, descriptions of assumptions
12 used in any calculations, and shall recommend Licensing and
13 Certification Program fees in accordance with the following:

14 (A) Projected workload and costs shall be grouped for each fee
15 category, including workload costs for facility categories that have
16 been established by statute and for which licensing regulations
17 and procedures are under development.

18 (B) Cost estimates, and the estimated fees, shall be based on
19 the appropriation amounts in the Governor's proposed budget for
20 the next fiscal year, with and without policy adjustments to the fee
21 methodology.

22 (C) The allocation of program, operational, and administrative
23 overhead, and indirect costs to fee categories shall be based on
24 generally accepted cost allocation methods. Significant items of
25 costs shall be directly charged to fee categories if the expenses can
26 be reasonably identified to the fee category that caused them.
27 Indirect and overhead costs shall be allocated to all fee categories
28 using a generally accepted cost allocation method.

29 (D) The amount of federal funds and General Fund moneys to
30 be received in the budget year shall be estimated and allocated to
31 each fee category based upon an appropriate metric.

32 (E) The fee for each category shall be determined by dividing
33 the aggregate state share of all costs for the Licensing and
34 Certification Program by the appropriate metric for the category
35 of licensure. Amounts actually received for new licensure
36 applications, including change of ownership applications, and late
37 payment penalties, pursuant to Section 1266.5, during each fiscal
38 year shall be calculated and 95 percent shall be applied to the
39 appropriate fee categories in determining Licensing and
40 Certification Program fees for the second fiscal year following

1 receipt of those funds. The remaining 5 percent shall be retained
2 in the fund as a reserve until appropriated.

3 (2) (A) ~~The department shall prepare a~~ A staffing and systems
4 analysis to ensure efficient and effective utilization of fees
5 collected, proper allocation of departmental resources to licensing
6 and certification activities, survey schedules, complaint
7 investigations, enforcement and appeal activities, data collection
8 and dissemination, surveyor training, and policy development.

9 (B) The analysis under this paragraph shall be made available
10 to interested persons and shall include all of the following:

11 (i) The number of surveyors and administrative support
12 personnel devoted to the licensing and certification of health care
13 facilities.

14 (ii) The percentage of time devoted to licensing and certification
15 activities for the various types of health facilities.

16 (iii) The number of facilities receiving full surveys and the
17 frequency and number of follow up visits.

18 (iv) The number and timeliness of complaint investigations.

19 (v) Data on deficiencies and citations issued, and numbers of
20 citation review conferences and arbitration hearings.

21 (vi) Other applicable activities of the licensing and certification
22 division.

23 (3) *The annual program fee report described in subdivision (d)*
24 *of Section 1416.36.*

25 (e) *The reports required pursuant to subdivision (d) shall be*
26 *submitted in compliance with Section 9795 of the Government*
27 *Code.*

28 (e)

29 (f) (1) The department shall adjust the list of estimated fees
30 published pursuant to subdivision (c) if the annual Budget Act or
31 other enacted legislation includes an appropriation that differs
32 from those proposed in the Governor's proposed budget for that
33 fiscal year.

34 (2) The department shall publish a final fee list, with an
35 explanation of any adjustment, by the issuance of an all facilities
36 letter, by posting the list on the department's Internet Web site,
37 and by including the final fee list as part of the licensing application
38 package, within 14 days of the enactment of the annual Budget
39 Act. The adjustment of fees and the publication of the final fee list
40 shall not be subject to the rulemaking requirements of Chapter 3.5

(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(f)~~

(g) (1) No fees shall be assessed or collected pursuant to this section from any state department, authority, bureau, commission, or officer, unless federal financial participation would become available by doing so and an appropriation is included in the annual Budget Act for that state department, authority, bureau, commission, or officer for this purpose. No fees shall be assessed or collected pursuant to this section from any clinic that is certified only by the federal government and is exempt from licensure under Section 1206, unless federal financial participation would become available by doing so.

(2) For the 2006–07 state fiscal year, no fee shall be assessed or collected pursuant to this section from any general acute care hospital owned by a health care district with 100 beds or less.

~~(g)~~

(h) The Licensing and Certification Program may change annual license expiration renewal dates to provide for efficiencies in operational processes or to provide for sufficient cash flow to pay for expenditures. If an annual license expiration date is changed, the renewal fee shall be prorated accordingly. Facilities shall be provided with a 60-day notice of any change in their annual license renewal date.

~~SEC. 2.~~

SEC. 3. Section 1416.36 of the Health and Safety Code is amended to read:

1416.36. (a) The fees prescribed by this chapter are as follows:

(1) The application fee for reviewing an applicant's eligibility to take the examination shall be twenty-five dollars (\$25).

(2) The application fee for persons applying for reciprocity consideration licensure under Section 1416.40 shall be fifty dollars (\$50).

(3) The application fee for persons applying for the AIT Program shall be one hundred dollars (\$100).

(4) The examination fees shall be:

(A) Two hundred seventy-five dollars (\$275) for an automated national examination.

1 (B) Two hundred ten dollars (\$210) for an automated state
2 examination or one hundred forty dollars (\$140) for a written state
3 examination.

4 (5) The fee for an initial license shall be one hundred ninety
5 dollars (\$190).

6 (6) The renewal fee for an active or inactive license shall be
7 one hundred ninety dollars (\$190).

8 (7) The delinquency fee shall be fifty dollars (\$50).

9 (8) The duplicate license fee shall be twenty-five dollars (\$25).

10 (9) The fee for a provisional license shall be two hundred fifty
11 dollars (\$250).

12 (10) The fee for endorsement of credentials to the licensing
13 authority of another state shall be twenty-five dollars (\$25).

14 (11) The preceptor certification fee shall be fifty dollars (\$50)
15 for each three-year period.

16 (12) The biennial fee for approval of a continuing education
17 provider shall be one hundred fifty dollars (\$150).

18 (13) The biennial fee for approval of a continuing education
19 course shall be not more than fifteen dollars (\$15).

20 (b) (1) If the revenue projected to be collected is less than the
21 projected costs for the budget year, the department may propose
22 that fees be adjusted to an amount sufficient to cover the reasonable
23 regulatory costs to the department. ~~Commencing~~ *Notwithstanding*
24 *Section 10231.5 of the Government Code, commencing February*
25 *1, 2013, and every February 1 thereafter, the department shall*
26 *publish a list of proposed adjustments to fees pursuant to this*
27 *section. The department shall make this list available to the public*
28 *by submitting it to the appropriate policy and fiscal committees*
29 *of the Legislature and by posting it on the department's Internet*
30 *Web site.*

31 (2) *The list described in paragraph (1) shall be submitted in*
32 *compliance with Section 9795 of the Government Code.*

33 (c) (1) The department shall, within 30 days of the enactment
34 of the annual Budget Act each year, publish a list of actual
35 numerical fee charges as adjusted pursuant to this section. The
36 final fee list, with an explanation of any adjustment, shall be
37 published by ~~all~~ *both* of the following means:

38 ~~(A) Issuing a letter to all licensed nursing home administrators,~~
39 ~~all skilled nursing facilities and intermediate care facilities, and~~
40 ~~all continuing education providers.~~

1 ~~(B) Posting the list on~~

2 (A) On the department's Internet Web site.

3 ~~(C) Including the final fee list as part of the licensing application~~
4 ~~package.~~

5 (B) *In the initial licensing application package, by including a*
6 *reference to the link to the department's Internet Web site address*
7 *as described in subparagraph (A).*

8 (2) (A) This adjustment of fees and the publication of the fee
9 list shall not be subject to the requirements of Chapter 3.5
10 (commencing with Section 11340) of Part 1 of Division 3 of Title
11 2 of the Government Code.

12 ~~(B) (i) For purposes of ensuring efficient and effective~~
13 ~~utilization of fees collected and proper allocation of departmental~~
14 ~~resources for the administration of activities required by this~~
15 ~~chapter, the department shall conduct a staffing and systems~~
16 ~~analysis. By March 31, 2013, the department shall make a report~~
17 ~~detailing this analysis available to the public by posting it on the~~
18 ~~department's Internet Web site, and by submitting it to the~~
19 ~~appropriate policy and fiscal committees of the Legislature.~~

20 ~~(ii) The report submitted pursuant to clause (i) shall be submitted~~
21 ~~in compliance with Section 9795 of the Government Code.~~

22 ~~(iii) Pursuant to Section 10231.5 of the Government Code, the~~
23 ~~requirement for submitting a report imposed pursuant to this~~
24 ~~subparagraph is inoperative on January 1, 2017.~~

25 (d) (1) ~~By January 15 Notwithstanding Section 10231.5 of the~~
26 ~~Government Code, by February 1~~ of each year, the department
27 shall prepare a report containing the following information, and
28 shall make this report available to the public by submitting it to
29 the appropriate policy and fiscal committees of the Legislature;
30 and by posting it on the department's Internet Web site, *as required*
31 *by Section 1266:*

32 (A) Estimates of costs to implement activities required by this
33 chapter and estimated fee revenue.

34 (B) Recommended adjustments to fees based on projected
35 workload and costs.

36 (C) An analysis containing the following information for the
37 current fiscal year and each of the previous four fiscal years:

38 (i) The number of persons applying for a nursing home
39 administrator's license, the number of nursing home administrator

1 licenses approved or denied, and the number of nursing home
2 administrator licenses renewed.

3 (ii) The number of applicants taking the nursing home
4 administrator exam and the number of applicants who pass or fail
5 the exam.

6 (iii) The number of persons applying for, accepted into, and
7 completing the AIT Program.

8 (iv) The number, source, and disposition of complaints made
9 against persons in the AIT Program and licensed nursing home
10 administrators, including the length of time between receipt of the
11 complaint and completion of the investigation.

12 (v) The number and type of final administrative, remedial, or
13 disciplinary actions taken against licensed nursing home
14 administrators.

15 (vi) A listing of the names and nature of violations for individual
16 licensed nursing home administrators, including final
17 administrative, remedial, or disciplinary actions taken.

18 (vii) The number of appeals, informal conferences, or hearings
19 filed by nursing home administrators or held, the length of time
20 between the request being filed and the final determination of the
21 appeal, and the number of administrative, remedial, or disciplinary
22 actions taken.

23 (2) ~~The reports~~ *report* required to be submitted pursuant to
24 paragraph (1) shall be submitted in compliance with Section 9795
25 of the Government Code.

26 ~~SEC. 3.~~

27 *SEC. 4.* Section 1416.38 of the Health and Safety Code is
28 amended to read:

29 1416.38. Within 10 days after the beginning of every month,
30 all fees collected by the program for the month preceding, under
31 this chapter, shall be paid into the State Department of Public
32 Health Licensing and Certification Program Fund established by
33 Section 1266.9, to defray the expenses of the program and in
34 carrying out and enforcing the provisions of this chapter.

35 ~~SEC. 4.~~

36 *SEC. 5.* Section 1416.70 of the Health and Safety Code is
37 amended to read:

38 1416.70. (a) The program shall establish a system for the
39 issuance of citations to licensees, examinees, or participants of
40 any program activity offered or approved by the program. The

1 citations may contain an order of abatement, an order to pay an
2 administrative fine assessed by the program chief, or both, where
3 the licensee, examinee, or participant is in violation of any state
4 or federal statute or regulation governing licensed nursing home
5 administrators.

6 (b) The system shall contain all of the following provisions:

7 (1) Citations shall be in writing and shall describe with
8 particularity the nature of the violation, including specific reference
9 to the provision of law determined to have been violated.

10 (2) Where appropriate, the citation shall contain an order of
11 abatement fixing reasonable time for abatement of the violation.

12 (3) (A) Administrative fines assessed by the program shall be
13 separate from and shall not preclude the levying of any other fines
14 or any civil or criminal penalty.

15 (B) In no event shall the administrative fine assessed by the
16 program be less than fifty dollars (\$50) or exceed two thousand
17 five hundred dollars (\$2,500) for each violation. The total
18 assessment shall not exceed ten thousand dollars (\$10,000) for
19 each investigation or for counts involving fraudulent billings
20 submitted to insurance companies, Medi-Cal, or Medicare
21 programs.

22 (4) In assessing a fine, the program shall give due consideration
23 to the appropriateness of the amount of the fine with respect to
24 factors such as the gravity of the violation, the good faith effort of
25 the licensee, examinee, or participant, the unprofessional conduct,
26 including, but not limited to, incompetence and negligence in the
27 performance of the duties and responsibilities of an administrator,
28 the extent to which the cited person has mitigated or attempted to
29 mitigate any damage or injury caused by his or her violation,
30 whether the violation was related to patient care, the history of any
31 previous violations, and other matters as may be appropriate.

32 (5) A citation or fine assessment issued pursuant to a citation
33 shall inform the licensee, examinee, or participant that if he or she
34 desires a hearing to contest the finding of a violation, the hearing
35 shall be requested by written notice to the program within 30 days
36 after the date of issuance of the citation or assessment. A licensee
37 may, in lieu of contesting a citation pursuant to this section,
38 transmit to the state department 75 percent of the amount specified
39 in the citation for each violation within 15 business days after the
40 issuance of the citation.

1 (6) Failure of a licensee, examinee, or participant to pay a fine
2 within 30 days of the date of the assessment, unless the citation is
3 being appealed, may result in further disciplinary action being
4 taken by the program. Where a citation is not contested and a fine
5 is not paid, the full amount of the assessed fine, along with any
6 accrued penalty interest, shall be added to the fee for renewal of
7 the license. A license shall not be renewed without payment of the
8 renewal fee, fine, and accrued interest penalty. A citation may be
9 issued without the assessment of an administrative fine.

10 (c) Assessment of administrative fines may be limited to only
11 particular violations of the applicable licensing act.
12 Notwithstanding any other provisions of law, where a fine is paid
13 to satisfy an assessment based on the finding of a violation,
14 payment of the fine shall be represented as satisfactory resolution
15 of the matter for purposes of public disclosures. Administrative
16 fines collected pursuant to this section shall be deposited in the
17 State Department of Public Health Licensing and Certification
18 Program Fund established by Section 1266.9.